

Calendar No. 119

104TH CONGRESS }
1st Session

SENATE

{ REPORT
104-91

FISHERIES ACT OF 1995

R E P O R T

OF THE

**COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION**

ON

S. 267



MAY 26 (legislative day, MAY 15), 1995.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

99-010

WASHINGTON : 1995

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

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Mr. PRESSLER, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 267]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 267) “A Bill to establish a system of licensing, reporting, and regulation for vessels of the United States fishing on the high seas, and for other purposes”, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE OF THE BILL

S. 267, the Fisheries Act of 1995, implements a number of measures that would strengthen international fishery conservation and management. Among other objectives, it would: (1) implement an international agreement requiring vessels fishing on the high seas to be licensed; (2) implement an international agreement to conserve and manage northwest Atlantic fisheries; (3) reauthorize and strengthen the Atlantic Tunas Convention Act of 1975; (4) amend and reauthorize the Fishermen’s Protective Act of 1967 to allow the Secretary of State to reimburse U.S. fishermen for certain foreign transit fees; (5) amend the Central Bering Sea Fisheries Enforcement Act of 1992 to protect fishery resources in the Sea of Okhotsk; (6) prohibit the United States from entering into international fisheries agreements which weaken the United Nations’ moratorium on driftnet fishing; and (7) provide Congressional approval of a governing international fishery agreement with Estonia.

BACKGROUND AND NEEDS

High Seas Fisheries Licensing Agreement

On November 24, 1993, the United Nations (U.N.) Food and Agriculture Organization (FAO) adopted by consensus an international agreement entitled the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO Agreement). The FAO Agreement was negotiated largely at the initiative of the United States in response to the fisheries crises that have arisen in many corners of the world. As the size and efficiency of modern fleets has come to exceed the productivity of their traditional coastal harvesting areas, fishery managers of coastal nations generally have reacted by imposing stricter management regimes. As a result, some of the excess capacity has been displaced, and some vessels have sought fishing opportunities in distant waters or on the high seas.

In September 1992, at an FAO technical conference on high seas fishing, the U.S. delegation proposed that a treaty be prepared under FAO auspices to address one problem plaguing efforts to manage fisheries on the high seas. The concern was that vessels belonging to a member nation of a regional fisheries organization would reflag to a non-member nation, with the purpose of continuing to fish in the management area unconstrained by rules set by the organization and its members. For example, the effectiveness of the International Commission for the Conservation of Atlantic Tunas (ICCAT) has been undermined by vessels registered and reflagged in nations that are not ICCAT members. Flying "flags of convenience," these vessels then fish for tuna in the North Atlantic in defiance of ICCAT rules.

The FAO technical conference recommended that a reflagging agreement be developed as quickly as possible as part of an International Code of Conduct for Responsible Fishing. In February 1993, a group of experts was convened to help prepare the first draft, and, after several negotiating sessions, the FAO conference adopted the final text of the treaty in November 1993. On April 15, 1994, the President transmitted the FAO Agreement to the Senate for advice and consent. The Senate approved the FAO Agreement on October 7, 1994.

Although the FAO Agreement has been popularly referred to as the "flagging agreement," it does not deal directly with the flagging of fishing vessels, in part because FAO negotiators did not wish to deter legitimate transfers of vessel registries or flags. The primary tenet of the FAO Agreement is the obligation of a nation to require specific authorization to fish on the high seas for vessels carrying its flag. The nation is also responsible for ensuring that its authorized vessels do not undermine conservation and management measures that have been adopted by global or regional fishery management organizations.

The United States has vessels fishing on the high seas in many parts of the world, but to date has no general law governing such fishing. S. 267 would provide that statutory authority, establishing a system of licensing, reporting, and regulation for the U.S. vessels fishing on the high seas.

Northwest Atlantic Fisheries Organization

Fishermen have harvested cod and other species from the northwest Atlantic Ocean for over 300 years. In 1949, recognizing signs of over-exploitation, 11 nations fishing in the region signed a convention forming the International Commission for the Northwest Atlantic Fisheries (ICNAF). Both the United States and Canada were members of ICNAF, which became responsible for assessing and conserving northwest Atlantic fishery resources. In 1976, however, the Magnuson Fishery Conservation and Management Act (Magnuson Act) established a domestic regime for U.S. fisheries within the 200-mile exclusive economic zone (EEZ). The United States subsequently determined that the ICNAF convention was inconsistent with this new fishery law, and withdrew membership.

After withdrawing from ICNAF, the United States participated in the negotiation of another multilateral fisheries agreement for the northwest Atlantic which was consistent with the Magnuson Act. This agreement, the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (NAFO Convention), was concluded at Ottawa, Canada, in 1978. The NAFO convention applies to fishing activities outside the EEZ, and replaces ICNAF with the Northwest Atlantic Fisheries Organization (NAFO). In 1979, President Carter submitted the convention to the Senate for its advice and consent. Although the Senate gave its advice and consent in 1983, implementing legislation was not enacted, and the United States never deposited the instrument of ratification.

The NAFO regulatory area stretches offshore from the northern edge of Baffin Bay to Cape Hatteras, North Carolina. The eastern boundary of the NAFO area is the 42nd meridian running through the southern tip of Greenland. Concentrations of fish generally are much lower in the NAFO area than within the adjoining 200-mile zones of Canada and the United States. However, fish densities are higher in the Flemish Cap area east of St. John and in the “nose” and “tail” of the Grand Banks which lie more than 200 miles offshore. Major species managed under the NAFO authority include *Illex* squid, redfish, capelin, American plaice, Atlantic cod, yellowtail flounder, and witch flounder. NAFO does not manage salmon, tunas, marlins, or swordfish.

In 1984, the World Court’s Georges Bank U.S.-Canada boundary decision displaced U.S. fishermen from traditional fishing grounds by declaring them Canadian waters. Subsequently, some larger U.S. vessels shifted their effort to the nose and tail of the Grand Banks, which is in the NAFO area beyond the Canadian EEZ. At the time these vessels were concerned that their operations would be restricted by NAFO guidelines and regulations, and there was opposition to U.S. participation in the organization. Now, the U.S. fishing effort in the NAFO area has decreased, and the opposition of New England fishermen has waned. S. 267 would provide statutory authority for U.S. implementation of the NAFO Convention.

Atlantic Tunas Convention Act reauthorization

Certain marine fish species—including tunas, swordfish, marlins, sailfishes, and pelagic sharks—migrate through broad oceanic expanses and traverse the coastal waters of many nations. Of these “highly migratory species,” tuna stocks in particular support major

fisheries and are among the most highly valued of marine resources. Due to the transboundary nomadic nature of the fish, effective efforts to conserve and manage highly migratory species require international cooperation and coordination.

ICCAT provides for international management of tuna fisheries in the Atlantic Ocean and in the Mediterranean Sea. Established under an international convention in 1966, the objective of ICCAT is to recommend measures for maintaining harvests of tuna and other highly migratory species. The Atlantic Tunas Convention Act provides domestic regulatory and administrative mechanisms for U.S. compliance with ICCAT. The Act calls for appointment of three U.S. Commissioners and establishment of an advisory committee. Under the Act, the Secretary of Commerce (Secretary) promulgates regulations necessary to implement ICCAT recommendations. Such regulations have provided for establishment of fishing seasons, quotas, minimum sizes, closed areas, gear restrictions, enforcement procedures, and licensing and reporting requirements.

The Atlantic bluefin tuna is among the largest of the tunas (up to 1500 pounds) managed under ICCAT. The species supports both commercial and recreational fisheries in the United States. In 1993, the U.S. commercial industry landed over 3.5 million pounds of bluefin tuna, valued at almost \$22 million. In addition, the fishery generates significant revenues for supporting industries and businesses.

Due to declines in the Atlantic bluefin tuna population, regulatory measures were recommended by ICCAT in 1974. For management purposes, ICCAT adopted a two-stock hypothesis, using a line drawn at 45 degrees west longitude, thereby dividing the Atlantic bluefin tuna population into western and eastern stocks. This decision resulted in American fishermen being subject to separate and more restrictive catch limits than European fishermen.

In 1982 and 1983, concern over the low abundance levels of small bluefin tuna in the western Atlantic led to additional catch restrictions. By contrast, harvests in the eastern Atlantic and Mediterranean continued unchecked, almost doubling between 1981 and 1992. In 1992, western Atlantic catches represented about 7.5% of the Atlantic bluefin tuna landings. This stands in sharp contrast to the western Atlantic's 29% share of landings in the late 1970s and early 1980s.

Over the years, many U.S. fishing groups continued to press for a new scientific investigation of the stock structure of Atlantic bluefin tuna. In 1994, a National Research Council (NRC) report, "An Assessment of Atlantic Bluefin Tuna," concluded that available scientific evidence was consistent with a single stock, two spawning area hypothesis and recommended that a new Atlantic bluefin stock assessment be carried out. S. 267 would extend the Atlantic Tunas Convention Act and establish a research program to resolve such stock assessment questions.

Fishermen's Protective Act amendments

The negotiation of fishing arrangements under the U.S.-Canadian Pacific Salmon Treaty has been an issue of growing controversy in recent years. Last year, tension among U.S. fishermen escalated sharply with the Canadian announcement that an \$1100

“transit fee” (\$1500 in Canadian dollars) would be imposed on each U.S. commercial fishing vessel transiting Canadian waters off British Columbia between Alaska and the Pacific Northwest. While such fees are clearly prohibited under customary international law and the U.N. Convention on the Law of the Sea, the Canadian requirement was dropped only after many U.S. fishermen had paid the fee.

Under the Fishermen's Protective Act, the Secretary of State must reimburse U.S. fishermen for financial losses due to an illegal vessel seizure by another nation. However, the Act does not provide for compensation for costs incurred (e.g., payment of the Canadian transit fee) to avoid such a seizure. S. 267 would allow for reimbursement of fees paid in such a situation if the United States considers the fees to be inconsistent with international law.

Sea of Okhotsk

In the Bering Sea, unregulated fishing in the area of international waters between the EEZs of the United States and Russia (the “Doughnut Hole”) threatened efforts to manage effectively valuable Bering Sea fishery resources. In 1992, Congress enacted the Central Bering Sea Fisheries Enforcement Act to prohibit U.S. fishermen, and discourage foreign fishermen, from fishing in the Doughnut Hole until an international agreement could be reached. Six nations (the United States, Russia, Japan, China, Korea, and Poland) subsequently developed an international agreement to manage fishing in the central Bering Sea.

A situation similar to that in the Doughnut Hole threatens the viability of the stocks in the international waters of the Sea of Okhotsk where fishermen from various nations, but not from the United States, have begun to fish. This high seas area is surrounded by the Russian EEZ and is known as the “Peanut Hole.” S. 267 would expand the Central Bering Sea Fisheries Enforcement Act to prohibit U.S. fishermen from fishing in the Peanut Hole except under an international agreement, thus reaffirming the U.S. commitment through international fishery agreements to sustainable fishery resource conservation and management in areas beyond national jurisdiction.

Moratorium on high seas driftnet fishing

On December 31, 1992, a U.N. resolution calling for a global moratorium on large scale driftnet fishing (the use of driftnets longer than 2.5 kilometers) on the high seas went into effect. In 1993, Chinese-flagged driftnet vessels were observed and intercepted by the U.S. Coast Guard in the North Pacific, though the following year there were no observations of driftnet fishing in the region. Recent studies by the environmental organization, Greenpeace, indicate that Italy is conducting driftnet fishing for swordfish in the Mediterranean Sea in violation of the U.N. moratorium. Furthermore, Greenpeace reports that the Italian Director of Fisheries has publicly acknowledged that over 720 Italian driftnet boats are currently fishing in the Mediterranean with nets averaging 10 kilometers (6 miles) in length. S. 267 would reaffirm the commitment of the United States to fully implement, and strengthen where pos-

sible, international efforts to end large-scale driftnet fishing on the high seas.

Estonia fishery agreement

Under the terms of the Magnuson Act, all foreign fishing activities in the U.S. EEZ must be conducted pursuant to a governing international fishery agreement (GIFA). Such agreement must be transmitted to the Senate and House, and can go into effect either: (1) upon Congressional approval; or (2) when the agreement has been before the Congress for 60 days of continuous session. The date of transmittal of the Estonia agreement was January 20, 1995. S. 267 would provide Congressional approval of the Estonia GIFA.

LEGISLATIVE HISTORY

S. 267 was introduced by Senators Stevens, Kerry, Gorton, Murray, and Murkowski on January 24, 1995. Senator Breaux joined as a cosponsor on March 9, 1995. S. 267 contains a number of measures to strengthen international fishery management that were included in legislation introduced and considered, but not enacted, in the 103rd Congress. Among the bills from the 103rd Congress that have been included in S. 267 are: (1) S. 2455, the High Seas Fisheries Licensing Act; (2) H.R. 3058, the Northwest Atlantic Fisheries Convention Act; (3) S. 1611, the Atlantic Tunas Convention Authorization Act; (4) S. 2243, the Fishermen's Protective Act Amendment of 1994; (5) S. 1515, the Sea of Okhotsk Fisheries Enforcement Act; and (6) S. 2569, the High Seas Driftnet Fishing Moratorium Protection Act. A Committee hearing on these matters was held on July 21, 1994.

On March 23, 1995, in open executive session, the Committee considered S. 267 and ordered the bill, with technical and conforming amendments, reported by unanimous voice vote. During the executive session, Senator Snowe offered an amendment to restrict directed foreign fishing within the U.S. EEZ for Atlantic herring and Atlantic mackerel. However, when concerns were raised about the amendment, Senator Snowe agreed to defer inclusion of such a provision until the concerns could be resolved.

SUMMARY OF MAJOR PROVISIONS

TITLE I—THE HIGH SEAS FISHERIES LICENSING ACT OF 1995

This title provides for domestic implementation of the FAO Agreement. The legislation would establish a system of licensing, reporting, and regulation for U.S. vessels fishing on the high seas. Specific provisions would: (1) require publication of a list of international conservation and management measures recognized by the United States that U.S. high seas fishing vessels must comply with when fishing in areas in which those measures apply; (2) require all U.S. fishing vessels operating on the high seas to have on board a valid license issued by the Secretary; (3) prevent vessels from obtaining a U.S. license to avoid punishment for violation of international measures; (4) require the Secretary to maintain a register of vessels licensed under the statute and to report to the FAO information on those vessels and their activities; and (5) establish en-

forcement procedures, civil and criminal penalties, forfeitures, and license sanctions consistent with the Magnuson Act.

TITLE II—THE NORTHWEST ATLANTIC FISHERIES CONVENTION ACT

This title governs U.S. participation in international efforts to assess and conserve high seas fishery resources off the coasts of Canada and New England. Among other provisions, the title provides for: (1) U.S. representation in NAFO; (2) coordination between NAFO and appropriate regional fishery management councils (Councils) established under the Magnuson Act; and (3) authorization for the Secretary and the Secretary of State to carry out U.S. treaty responsibilities in the northwest Atlantic.

TITLE III—ATLANTIC TUNAS CONVENTION AUTHORIZATION ACT

This title extends the authorization of appropriations for the Atlantic Tunas Convention Act through fiscal year 1998; provides for the development of a research and monitoring program for bluefin tuna and other wide-ranging Atlantic fish stocks; establishes operating procedures for the ICCAT advisory committee; and clarifies procedures for dealing with nations that fail to comply with ICCAT recommendations.

TITLE IV—FISHERMEN'S PROTECTIVE ACT

This title reauthorizes and amends the Fishermen's Protective Act of 1967 to allow the Secretary of State to reimburse U.S. fishermen for transit fees paid to a foreign country if such fees are not consistent with international law.

TITLE V—SEA OF OKHOTSK FISHERIES ENFORCEMENT ACT

This title prohibits U.S. fishermen from fishing in the international waters of the Sea of Okhotsk except where such fishing is conducted in accordance with a fishery agreement to which both the United States and Russia are parties.

TITLE VI—HIGH SEAS DRIFTNET FISHING MORATORIUM PROTECTION ACT

This title prohibits the United States from entering into an international agreement with respect to the conservation and management of living marine resources if the agreement would prevent full implementation of the U.N. moratorium on large-scale driftnet fishing on the high seas.

TITLE VII—GOVERNING INTERNATIONAL FISHERY AGREEMENT

This title provides Congressional approval of the GIFA between the United States and the Republic of Estonia.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 12, 1995.

Hon. LARRY PRESSLER,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed revised cost estimate for S. 267, the Fisheries Act, 1995. This revised estimate supersedes the estimate the CBO provided on April 5, 1995.

Enactment of S. 267 would affect direct spending and receipts; therefore, pay-as-you-go procedures would apply.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 267.
2. Bill title: Fisheries Act of 1995.
3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation on March 28, 1995.
4. Bill purpose: S. 267 would:
 - Establish a system of licensing, reporting and regulation for vessels of the United States fishing on the high seas;
 - Implement the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries;
 - Reauthorize the Atlantic Tunas Convention Authorization Act;
 - Amend the Fishermen's Protective Act of 1967;
 - Prohibit the United States from entering into agreements that would violate any international driftnet moratoriums; and
 - Approve an international fishery agreement between the United States and the Republic of Estonia.
5. Estimated cost to the Federal Government: S. 267 would authorize appropriations of \$3.3 million for 1995 and \$4.5 million each year for 1996 through 1998 to carry out Titles II and III. In addition, we estimate that Title IV would authorize net new spending of slightly more than \$0.1 million annually for 1996 through 2000. This estimate assumes that the full amounts authorized would be appropriated. There is no spending for these activities under current law.

CBO estimates that enacting S. 267 also would affect direct spending and revenues. The following table summarizes CBO's estimates of the budgetary impact of this bill.

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000
Authorization of appropriations	3.3	4.9	4.9	4.9	0.4	0.4
Less: Offsetting collections	—	0.3	0.3	0.3	0.3	0.3
Net authorization of appropriations	3.3	4.6	4.6	4.6	0.1	0.1

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000
Estimated outlays	0	4.3	4.8	5.1	2.1	0.7
Direct spending:						
Estimated budget authority	—	0.3	(1)	(1)	(1)	(1)
Estimated outlays	—	0.3	(1)	(1)	(1)	(1)
Revenues	—	(1)	(1)	(1)	(1)	(1)

¹ CBO cannot estimate this amount precisely, but expects that it would be less than \$500,000.

The costs of this bill fall within budget functions 300 and 370.

6. Basis of estimate:

Authorizations of Appropriations.—S. 267 would authorize appropriations to carry out Titles II and III. Title II would authorize appropriations of \$500,000 each year for 1995 through 1998 for payment to the Northwest Atlantic Fisheries Organization. Title III would authorize appropriations of \$2.75 million in fiscal year 1995 and \$4 million in fiscal years 1996 through 1998 to carry out the Atlantic Tunas Convention Act. The National Oceanic and Atmospheric Administration (NOAA) did not receive an appropriation to carry out these activities in 1995. Because some of Title III's requirements are similar to functions already being carried out by NOAA within its Operations, Research and Facilities account, CBO used that account's outlay rate for estimating outlays of the amounts authorized in Title III.

Title IV would extend the authorization of the Fishermen's Guaranty Fund through fiscal year 2000. Outlays from this program have averaged approximately \$400,000 per year, but there has not been any appropriation for this program since 1991. Current law requires that the Department of State limit total fees collected for this program to twice the appropriation received for its operation. Therefore, CBO estimates that enacting this provision will result in net costs to the federal government of approximately \$133,000 per year—the State Department would spend about \$400,000 a year, of which \$267,000 would be covered by fees and the remainder by appropriations.

Direct Spending.—Enacting Title IV would make owners of various fishing vessels eligible for payments totaling \$284,000 from the Fishermen's Protective Fund or the Fishermen's Guaranty Fund. Both funds currently have sufficient unobligated balances to make such payments, so we estimate that the bill would result in additional outlays of \$285,000 in 1996. This amount would constitute direct spending because the expenditures would take place without further appropriation action.

Revenues.—The bill would establish civil and criminal penalties for violations of the provisions of Titles I, II, III and V. Criminal fines would be deposited in the Crime Victims Fund and would be spent in the following year. Civil penalties collected under Title I would be deposited in the general fund of the Treasury. Both would be counted as revenues. Titles II and III of the bill would authorize the Secretary of Commerce to impose additional civil and criminal penalties on those that violate provisions of the titles. Receipts from penalties collected under Titles II, III and V would be used to pay for enforcement costs incurred by the Department of Commerce. Based upon information from the Department of Commerce,

CBO estimates that receipts collected from Titles I, II, III, and V would be less than \$500,000 per year.

Vessels used in an unlawful manner would be subject to civil forfeiture under Title II. Proceeds from the sale of assets forfeited to the federal government would be deposited as receipts into the assets forfeiture fund of the Department of Justice and spent—as direct spending—out of that fund. Therefore, any gain in revenues would be largely offset by increased direct spending.

In addition, commercial fishing vessels of nations charging certain fees would be required to pay a fee to the U.S. government. Any collections from such fees would be considered governmental receipts; however, because no countries are charging the fees in question to U.S. fishing vessels, CBO does not expect that any fees would be collected as a result of enactment of this provision.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. Because S. 267 would affect direct spending and receipts, the bill would be subject to pay-as-you-go procedures. The bill would increase spending by \$284,000 in 1996 out of unobligated balances of the Fishermen's Protective Fund or the Fishermen's Guaranty Fund.

S. 267 also would affect direct spending and receipts through the imposition of criminal fines and resulting spending from the Crime Victims Fund as well as the authorization of licensing fees and expanding the types of assets subject to forfeiture. CBO estimates that the amounts involved would not be significant. The following table summarizes the pay-as-you-go impact of this bill.

[By fiscal year, in millions of dollars]

	1996	1997	1998
Changes in outlays	0	0	0
Changes in receipts	0	0	0

8. Estimated cost to State and local governments: None.

9. Estimate comparison: None.

10. Previous CBO estimate: On April 5, 1995, CBO prepared an initial cost estimate for S. 267, the Fisheries Act of 1995, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on March 28, 1995. That initial estimate contained an error in the table showing estimated outlays from the bill's authorizations. This revised estimate corrects that error. Our estimate of outlays in the initial cost estimate for S. 267 was too low for the authorization levels specified in the bill.

On February 15, 1995, CBO prepared cost estimates for H.R. 622, H.R. 715, and H.R. 716, which correspond to Titles II, IV, and V, respectively, of S. 267. All three bills were ordered reported on February 8, 1995 by the House Committee on Resources. Titles II and V are identical to their respective House counterparts; however, Title IV differs in ways that would affect direct spending. H.R. 716 would extend the authorization of the Fishermen's Guaranty Fund through fiscal year 1998, and would repeal the requirement that a certain percentage of deposits to this fund come from appropriated funds. Title IV of S. 267 would extend the authoriza-

tion of the fund through fiscal year 2000 and does not include H.R. 716's repeal. Because of this change, CBO's estimate of authorizations of appropriations for Title IV is approximately \$133,000 higher than our estimate for H.R. 716.

11. Estimate prepared by: Rachel Robertson, John Webb, and Melissa Sampson.

12. Estimate approved by: Robert A. Sunshine, for Paul N. Van de Water, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation:

Number of persons covered

Title I of the bill, as reported, would require the U.S. high seas fishing fleet to comply with certain licensing, reporting and registration requirements. The number of U.S. fishing vessels currently operating on the high seas probably numbers less than 1000, and thus, this title will impact a relatively small number of individuals.

Title II of the bill, as reported, would allow the United States to participate in the management and allocation of the fishery stocks overseen by NAFO. Few U.S. vessels have fished in the NAFO regulatory area in recent years, although a small number may return if NAFO allocates a harvest quota to the United States.

Titles III, V, VI and VII, deal with research, monitoring activities and certain fishing prohibitions and would have minimal impact on individuals.

Title IV would allow the government to reimburse U.S. vessel owners who are assessed a fee by a foreign government for passing through that nation's waters. Last year, 258 U.S. vessels were charged a passage fee by Canada.

Economic impact

The Department of Commerce will incur some costs in fulfilling Federal responsibilities under the legislation. The bill, as reported, would allow license fees to be established for vessels required to register under title I of the Act. However, such fees would be limited to a level necessary to cover costs incurred in administering the license program. The Congressional Budget Office analysis suggests that these fees would increase receipts to the Federal government by less than \$500,000 per year.

Title IV would allow approximately \$284,000 to be reimbursed to the 258 U.S. vessels that paid a transit fee to Canada in 1994. These funds would be made available from unobligated balances from the Fishermen's Protective Fund or the Fishermen's Guaranty Fund.

The remaining titles would have minimal economic impact on individuals and are not expected to have an inflationary impact on the Nation's economy.

Privacy

This legislation will have a negligible impact on the personal privacy of the individuals affected.

Paperwork

As reported, some additional paperwork would be required from commercial fishermen in order to comply with the legislation. The bill specifies that the Secretary should minimize duplication of license application and reporting requirements contained in other regulations applicable to U.S. fishermen and vessels regulated under this legislation. Thus, any resulting increase in paperwork should be negligible.

SECTION-BY-SECTION ANALYSIS

TITLE I—HIGH SEAS FISHERIES LICENSING

Section 101. Short title

This section states that title I of S. 267, as reported, may be cited as the “High Seas Fisheries Licensing Act of 1995.”

Section 102. Purpose

This section states that the purpose of the legislation is to implement the FAO Agreement and to establish a system for licensing, reporting, and regulation of U.S. high seas fishing vessels.

Section 103. Definitions

This section defines a number of terms used throughout the title I of the reported bill. Some of the definitions are limited to include only international principles that have been accepted or adopted by the United States. For example, “high seas” is defined as the waters beyond the EEZ of any nation only to the extent such zone is recognized by the United States. Similarly, “international conservation and management measures” are defined as measures to conserve or manage living marine resources that are: consistent with the 1982 U.N. Convention on the Law of the Sea, and are recognized by the United States. These measures may be adopted by global, regional, or subregional fisheries organizations, or established by treaty or other international agreement. The reference to global organizations and other international agreements in the definition is intended to ensure that the numerous resolutions of the U.N. General Assembly with respect to a global moratorium on the use of large scale driftnets on the high seas are recognized as international conservation and management measures. An example of a measure adopted by a regional fisheries organization would be a recommendation developed by ICCAT and accepted by the United States, while an example of a subregional organization measure would include one adopted by the Annual Conference of the Convention on the Conservation and Management of the Pollock Resources in the Central Bering Sea. The term “Secretary” for the purposes of title I means the Secretary of Commerce. Other terms defined in this section include “Agreement,” “FAO,” “high seas fishing vessel,” “length,” “person,” “vessel of the United States,” “vessel

subject to the jurisdiction of the United States” and “vessel without nationality.”

Section 104. Licensing

This section establishes procedures for licensing high seas fishing vessels. Subsection (a) requires all U.S. vessels fishing on the high seas to have on board a valid license issued by the Secretary. Subsection (b) establishes eligibility requirements and is consistent with the FAO Agreement because it prohibits a high seas fishing vessel from switching to a U.S. flag to avoid punishment for violating an international fishery management program. Subsections (c) and (d) describe the license application process and conditions to be placed on any license issued. Subsection (e) allows the Secretary to establish licensing fees that would be used to offset Federal expenses in implementing the legislation. The level of fees would be limited to the administrative costs incurred by the Secretary in issuing the licenses. Finally, subsection (f) would limit the duration of the license, voiding it if a vessel loses its eligibility for U.S. documentation.

Section 105. Responsibilities of the Secretary

This section requires the Secretary to maintain a register of vessels licensed under this title. The Secretary would report to the FAO information on registered vessels and on activities of any vessels, whether U.S. or foreign, that might undermine international conservation and management measures. The Secretary also would report to a flag state information, including evidentiary material, relating to activities of a foreign vessel that undermine such measures. In addition, this section gives the Secretary the regulatory authority to implement the legislation and the FAO Agreement, and specifies that such regulations should minimize duplication of license application and reporting requirements contained in other regulations applicable to high seas fishing vessels. Finally, this section requires the Secretary to periodically publish in the Federal Register notice of international conservation and management measures recognized by the United States. The Committee expects the Secretary to publish a revised list shortly after any significant change is made to such measures.

Section 106. Unlawful activities

This section establishes a number of activities that would be prohibited, including: use of a high seas fishing vessel in contravention of international conservation and management measures; fishing on the high seas without a license; falsification of required information; impeding or assaulting an authorized officer; and commerce involving any resource taken or retained in violation of the requirements of this title.

Section 107. Enforcement provisions

This section contains enforcement provisions similar to those in the Magnuson Act. The Secretary and the Secretary of the Department in which the Coast Guard is operating are authorized to enter into agreements with other Federal or state agencies to utilize their services, equipment and facilities in enforcement activi-

ties. Officers are authorized, with or without warrant upon reasonable cause, to conduct searches, make arrests, seize a vessel and its catch, and issue citations.

Section 108. Civil penalties and license sanctions

Consistent with the Magnuson Act, this section provides for civil penalties of up to \$100,000 for each violation, and for license sanctions. This section also includes provisions patterned after the Magnuson Act for administrative procedures, judicial review, and collection of penalties.

Section 109. Criminal offenses

This section makes certain offenses involving bodily injury or threat of injury punishable as misdemeanors or, if aggravated, as felonies, consistent with the Magnuson Act.

Section 110. Forfeitures

This section is almost identical to the civil forfeiture provisions of the Magnuson Act, and provides for court jurisdiction, the entrance of judgements, service of process and the discharge of fish seized pursuant to such process. The section also establishes a rebuttable presumption, comparable to the one found in the Magnuson Act, that living marine resources found on board a high seas vessel and seized in connection with an act prohibited by this title have been taken or retained in violation of this title. The presumption can be rebutted by an appropriate showing of evidence to the contrary.

Section 111. Effective date

This section establishes that the legislation will take effect six months after the date of enactment.

TITLE II—IMPLEMENTATION OF CONVENTION ON FUTURE
MULTILATERAL COOPERATION IN NORTHWEST ATLANTIC FISHERIES

Section 201. Short title

This section states that title II of S. 267, as reported, may be cited as the "Northwest Atlantic Fisheries Convention Act of 1995."

Section 202. Representation of United States under Convention

This section describes the criteria to be used by the Secretary in appointing Commissioners to the General Council and Fisheries Commission created under the NAFO Convention, and in appointing representatives to the NAFO Scientific Council. The section authorizes the appointment of alternate commissioners and representatives, allows experts and advisors to attend NAFO meetings, and requires cooperation by the Commissioners, representatives and alternates with the appropriate Councils established under the Magnuson Act.

The Secretary is required to appoint up to three Commissioners for two-year terms to represent the United States at meetings of the NAFO General Council and Fisheries Commission. Of the Commissioners appointed, at least one must represent the commercial fishing industry, one must be a government official, and one must

be a voting non-federal member of the New England Council. The NAFO Commissioners may not serve more than two consecutive terms.

The Secretary is also required to appoint up to three representatives to the NAFO Scientific Council who are knowledgeable and experienced with respect to NAFO scientific issues, at least one of whom must be a Federal official. These representatives serve at the pleasure of the Secretary, and, unlike the two-term limit on non-federal Commissioners, are not limited in the number of terms they may serve.

When a Commissioner or representative cannot attend a NAFO meeting, the Secretary is authorized to designate an alternate who may exercise all the powers and perform all the duties of the designated position.

The Federal Advisory Committee Act (5 U.S.C. App.) would not apply to coordination and consultation requirements under this section.

Section 203. Requests for scientific advice

Under Article VII of the NAFO Convention, a coastal nation may request that the NAFO Scientific Council look into scientific issues associated with the conservation and management of a fishery resource within such nation's EEZ. This section would require consultation with the appropriate Councils and the concurrence of the Commissioners before a request is made under Article VII with respect to a U.S. fishery resource; and before U.S. representatives specify to the NAFO Scientific Council the fishery, area, and objectives associated with any requests that are made.

Section 204. Authorities of Secretary of State with respect to Convention

This section establishes the authority of the Secretary of State to undertake the following NAFO-related actions on behalf of the United States: (1) receive and transmit reports, requests, recommendations, proposals, and other NAFO communications; (2) object to or withdraw an objection to a NAFO fishery conservation and management proposal; (3) give or withdraw notice of intent to not be bound by a NAFO measure; (4) object or withdraw an objection to an amendment to the NAFO Convention; and (5) act upon or refer any other NAFO communication.

Section 205. Interagency cooperation

This section encourages cooperation among Federal agencies, the states, the New England and Mid-Atlantic Councils, and private institutions and organizations. Any Federal agency may participate in scientific and other programs, and furnish facilities and personnel to assist NAFO. The provision of such services, facilities, and personnel is reimbursable by NAFO.

Section 206. Rulemaking

This section provides authority to the Secretary to promulgate necessary regulations to carry out the objectives of the NAFO Convention and this title.

Section 207. Prohibited acts and penalties

This section would prohibit any person or vessel subject to U.S. jurisdiction from: violation of any regulation issued under this title or any binding measure of the NAFO Convention; resistance to, or prevention of, boarding by enforcement agents; resistance to arrest; commerce involving fish taken in violation of this section; and interference in the apprehension of a person who has committed an act prohibited by this section.

This section stipulates that both civil and criminal penalties apply, as does civil forfeiture of any vessel or catch. Enforcement is to be carried out by the Secretary and the Secretary of the department in which the Coast Guard is operating, and jurisdiction is held exclusively by U.S. district courts.

Section 208. Consultative committee

This section requires the establishment of a consultative committee, the membership of which would include representatives from the appropriate Councils and states, the Atlantic States Marine Fisheries Commission, the fishing and seafood processing industries, and others knowledgeable and experienced about the conservation and management of fisheries in the northwest Atlantic Ocean. Committee members would serve 2-year terms, could be reappointed, and would be authorized to attend public and Commissioner meetings, as well as other NAFO meetings to which they are invited. The Federal Advisory Committee Act would not apply to the consultative committee.

Section 209. Administrative matters

This section prohibits Commissioners, representatives, alternate commissioners and representatives, experts and advisors, and members of the consultative committee established in section 208 from receiving compensation from the government for their service in that capacity. This section requires the Secretary of State to, subject to the availability of appropriations, pay for the travel and other actual expenses of Commissioners, representatives, and their alternates, as well as for the travel and other actual expenses of up to six experts and advisors.

Section 210. Definitions

This section provides definitions of "authorized enforcement officer," "Commissioner," "Convention," "Fisheries Commission," "General Council," "Magnuson Act," "Organization," "person," "Representative," "Scientific Council," and "Secretary."

Section 211. Authorization of appropriations

This section authorizes appropriations of \$500,000 annually for fiscal years 1995 through 1998.

TITLE III—ATLANTIC TUNAS CONVENTION ACT

Section 301. Short title

This section states that title III of S. 267, as reported, may be cited as the "Atlantic Tunas Convention Authorization Act of 1995."

Section 302. Research and monitoring activities

This section establishes new research and monitoring requirements for Atlantic bluefin tuna and other highly migratory species. Subsection (a) would mandate that the Secretary report to Congress within 90 days after the date of enactment of S. 267 on current governmental and non-governmental research and monitoring activities. The report would be required to describe the personnel and budgetary resources involved and how each of the activities contributes to conservation and management of these species.

The 1994 NRC report on Atlantic bluefin tuna concluded that, contrary to findings of National Oceanic and Atmospheric Administration (NOAA) scientists, the bluefin tuna stock in the western Atlantic has remained stable since 1988. It recommended that alternative methods of data management, analyses, and peer review be used to estimate characteristics and trends in the Atlantic bluefin tuna population. The NRC report also points out that research supported by several Federal agencies outside the Department of Commerce, including the National Science Foundation, the Department of Energy, and the Office of Naval Research could contribute to implementation of its research recommendations. This report has raised serious questions about NOAA quality control and leadership with respect to the scientific assessment and monitoring of fisheries for highly migratory species, particularly Atlantic bluefin tuna. Consequently, the Committee anticipates that the Secretary will view the report required under this section of the reported bill as an opportunity to evaluate and implement administrative changes in existing NOAA programs in response to the issues raised by the NRC. The Committee is particularly interested in ensuring substantial participation by NOAA on a regional basis in stock assessments and monitoring of highly migratory species fisheries.

Section 302(b) amends Section 3 of the Act of September 4, 1980 (16 U.S.C. 971i), adding a new subsection that would mandate that the Secretary, in cooperation with the ICCAT advisory committee and in consultation with the ICCAT Commissioners and Secretary of State, develop and implement a research and monitoring program within six months to support the conservation and management of Atlantic highly migratory species. Objectives of the program would be to: (1) identify and define Atlantic stocks; (2) effectively monitor U.S. fishing activity; and (3) encourage the establishment of a comprehensive international research and monitoring effort. Elements of the program would include tagging studies, genetic and biochemical stock analyses, aerial population censuses, observers, port sampling, data collection for both recreational and commercial fisheries, biological studies, the integration of data and data bases in support of management decisions, and other necessary research.

Section 303. Advisory committee procedures

This section amends section 4 of the Atlantic Tunas Convention Act of 1975 concerning the ICCAT advisory committee and establishes administrative requirements for the advisory committee patterned after provisions of the Magnuson Act applicable to the Councils.

The section establishes that: (1) a majority of the advisory committee members constitutes a quorum, but that one or more designated members may hold meetings to allow public participation and discussion of measures concerning U.S. implementation of the ICCAT recommendations; (2) the advisory committee elect a chairman from among its members for a two-year term; (3) public meetings by the advisory committee be held at least twice a year; (4) the advisory committee develop and publish a statement of its organization, practices and procedures; (5) the composition of the advisory committee be balanced among the various groups concerned with ICCAT fisheries; and (6) the advisory committee not be subject to the Federal Advisory Committee Act.

This section also directs the Secretary to provide the advisory committee with administrative and support services in a timely fashion, and directs both the Secretary and Secretary of State to provide relevant fisheries and international fishery agreement information.

Section 304. Regulations

This section would amend section 6 of the Atlantic Tunas Convention Act which authorizes the Secretary to issue regulations to carry out ICCAT recommendations. Section 6 currently requires that no regulation implementing an ICCAT recommendation may have the effect of increasing or decreasing any allocation or quota of fish which the United States receives under ICCAT. However, in recent years, ICCAT managers increasingly have used fishing mortality rather than catch quotas as the mechanism to control member nations' fishing activities. This section of the reported bill makes a technical change, adding the term "fishing mortality" after "quota of fish" in the current statutory requirement. The change clarifies that the requirement to ensure that the U.S. fishermen have an opportunity to harvest the U.S. allocation under ICCAT is not tied to a specific management regime. Instead, it is a general standard necessary to encourage full U.S. participation in the development and implementation of effective international management efforts.

Section 305. Fines and permit sanctions

This section amends Section 7(e) of the Atlantic Tunas Convention Act to make the civil penalties and permit sanctions comparable to those found in the Magnuson Act.

Section 306. Authorization of appropriations

This section authorizes appropriations for the Atlantic Tunas Convention Act, providing \$2,750,000 for fiscal year 1995, and \$4,000,000 for each of the fiscal years 1996, 1997, and 1998.

Of the total amounts authorized, the ICCAT advisory committee and species working groups would receive \$50,000 in fiscal year 1995, \$62,000 in fiscal year 1996, and \$75,000 in fiscal years 1997 and 1998. Authorized funding for research activities would increase from \$1.5 million in fiscal year 1995 to \$2.5 million in fiscal years 1996, 1997 and 1998.

Section 307. Report and certification

This section would amend the Atlantic Tunas Convention Act by adding a new section 11 to require an annual report to Congress on international ICCAT compliance, including U.S. efforts to encourage such compliance. In addition, this section of the reported bill would add a new section 12 mandating that the Secretary identify and certify to the President any nation whose vessels are fishing in a manner that diminishes the effectiveness of ICCAT management efforts. Such a certification would: (1) trigger the President's discretionary authority to impose trade sanctions under section 8 of the Fishermen's Protective Act (22 U.S.C. 1978); and (2) require promulgation of regulations under section 6 of the Atlantic Tunas Convention Act to prohibit imports of ICCAT-managed fish from the certified nation.

Section 308. Management of yellowfin tuna

This section requires the Secretary, within 90 days of the date of enactment of S. 267, to publish a preliminary determination of annual commercial and recreational yellowfin tuna catches since 1980. After a 60-day public comment period, and within 140 days of the enactment of S. 267, publication of the final catch data would be required.

This section also would require the Secretary to implement ICCAT recommendations on yellowfin tuna that are agreed to by the United States.

TITLE IV—FISHERMEN'S PROTECTIVE ACT

Section 401. Findings

This section contains findings by Congress regarding the payment required by Canada from commercial fishing vessels of the United States for a license to transit through waters commonly referred to as the "Inside Passage" off the Pacific Coast of Canada in the summer of 1994. The findings state that the payment required by Canada—1,500 Canadian dollars—was inconsistent with international law, including the U.N. Convention on the Law of the Sea, and, in particular, Article 26 of that Convention, which specifically prohibits such fees. The findings also state that the payment threatened the safety of U.S. commercial fishermen who sought to avoid the fee by traveling in less protected waters.

Paragraphs (4), (6) and (7) of this section state that the Fishermen's Protective Act of 1967 provides for the reimbursement of vessel owners who are forced to pay a fee to secure the release of a vessel which has been seized, and that the Act should be amended to permit vessel owners to also be reimbursed for fees required by a foreign government to be paid in advance in order to navigate in the waters of that foreign country if the United States considers the fee to be inconsistent with international law.

Paragraph (9) of this section states that the United States should review its current policy with respect to the anchorage by commercial fishing vessels of Canada in U.S. waters off Alaska and should accord such vessels the same treatment that commercial fishing vessels of the United States are accorded for anchorage in Canadian waters off British Columbia. Paragraphs (10) and (11) state

that the President should ensure that, consistent with international law, the U.S. Coast Guard has available adequate resources to provide for the safety of U.S. citizens, and that the President should continue to review all agreements between the United States and Canada to identify actions that may be taken to convince Canada that any reinstatement of the transit license fee would be against Canada's long-term interests. Paragraph (13) states that the United States should redouble its efforts to seek expeditious agreement with Canada on appropriate fishery conservation and management measures that can be implemented through the Pacific Salmon Treaty to address issues of mutual concern.

Section 402. Amendment to the Fishermen's Protective Act of 1967

Section 402(a) amends the Fishermen's Protective Act of 1967 (22 U.S.C. 1971 et seq.) by creating a new section of that Act, section 11, which would require the Secretary of State to reimburse the owner of a U.S. vessel who is charged and pays a fee on or after June 15, 1994 under protest to the government of a foreign country to engage in transit passage between points in the United States (including a point in the EEZ or in an area over which jurisdiction is in dispute), if such fee is regarded by the United States as being inconsistent with international law.

Subsections (b) and (c) of the new section 11 describe information that would be required to be provided by vessel owners seeking reimbursement, and would require that reimbursements be made by the Secretary of State within 120 days of the date of payment of the fee, or within 90 days after the date of enactment of this section, whichever is later.

Subsection (d) of new section 11 would authorize funds to be made available from the unobligated balances of previously appropriated funds remaining in the Fishermen's Guaranty Fund established under section 7 and the Fishermen's Protective Fund established under section 9 of the Fishermen's Protective Act. To the extent that requests for reimbursement authorized under subsection (a) exceed funds in the two existing accounts, subsection (d) also authorizes appropriation of such sums as may be needed for such reimbursements.

Subsection (e) would require the Secretary of State to take such actions as the Secretary deems appropriate to make and collect claims against the foreign country which imposed the fee for amounts reimbursed by the Secretary to vessel owners.

Subsection (g) specifies that the new section 11 will only remain in effect until October 1, 1996.

Section 402(b) further amends the Fishermen's Protective Act by creating another new section, section 12, which would require the Secretary of State to certify to the President whenever the Secretary finds that the government of a nation has imposed conditions on the operation or transit of U.S. fishing vessels which the United States regards as being inconsistent with international law or an international agreement. Upon receipt of a certification, section 12 would require that the President direct the heads of Federal agencies to impose conditions on the operation or transit of the offending nation's fishing vessels which are similar to the conditions imposed on U.S. fishing vessels.

Section 403. Reauthorization

Section 403(a) amends section 7 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1977) by eliminating a requirement that the Federal government match at least one-third of fees paid by vessel owners who enter an agreement with the Secretary of State under which the Secretary will guarantee reimbursement of certain costs in the event that a vessel is seized and detained by a foreign country. This change allows vessel owners to enter agreements with the Secretary of State for the guarantee of certain costs even in the absence of the availability of federal funds.

Section 403(b) reauthorizes the provisions of section 7 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1977) through October 1, 2000.

Section 404. Technical corrections

Section 404(a) makes a technical correction to section 15(a) of the Marine Mammal Protection Act Amendments of 1994 (P.L. 103-238), by striking "April 1, 1994," and inserting "May 1, 1994." Section 15(a) provides the mechanism for the transition to the new regime created by P.L. 103-238 to regulate the taking of marine mammals incidental to commercial fishing operations.

The intent of section 15(a) was to strike the sunset date in the old regime regulating the taking of marine mammals by commercial fishing operations, section 114 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1383a), and to replace this sunset date with the words, "until superseded by regulations prescribed under section 118, or until September 1, 1995, whichever is earlier." Section 118 is the new section created by P.L. 103-238 to deal with the taking of marine mammals by commercial fishing operations.

However, P.L. 103-228, which became law on March 31, 1994, extended the sunset date in section 114 of the Marine Mammal Protection Act from April 1, 1994 to May 1, 1994. Section 15(a) of P.L. 103-238 should therefore have amended section 114 by striking "ending May 1, 1994." and not by striking "ending April 1, 1994,". Section 404(a) corrects this technicality.

Section 404(b) would make a technical correction to the North Pacific Anadromous Stocks Act of 1992 (title VIII of P.L. 102-567, 16 U.S.C. 5001 et seq.) (NPASA), which provides for domestic implementation of the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean. This subsection of the reported bill would amend the third prong of the definition of "fishing vessel" in the NPASA to read "any vessel supporting a vessel described in subparagraph (A) or (B)."

Section 803(13) of the NPASA currently defines the term "fishing vessel" to mean "(A) any vessel engaged in catching fish within the Convention area or in processing or transporting fish loaded in the Convention area; (B) any vessel outfitted to engage in any activity described in subparagraph (A); and (C) any vessel described in subparagraph (A) or (B)." Subparagraph (C) as it exists does not describe any vessel not already described in subparagraphs (A) and (B). The technical correction would give meaning to subparagraph (C), providing for the inclusion of support vessels in the definition of "fishing vessel," and thereby authorizing greater protection for anadromous fish in the waters of the North Pacific to which the

NPASA applies. This technical correction would make the definition of “fishing vessel” consistent with the definition of “fishing vessel” in the Magnuson Act, which includes “any vessel...normally used for...aiding or assisting one or more vessels at sea in the performance of any activity related to fishing.” (Section 3(11) of the Magnuson Act, 16 U.S.C. 1802(11)).

TITLE V—FISHERIES ENFORCEMENT IN CENTRAL SEA OF OKHOTSK

Section 501. Short title

This section states that title V of S. 267, as reported, may be cited as the “Sea of Okhotsk Fisheries Enforcement Act of 1995.”

Section 502. Fishing prohibition

This section would amend the Central Bering Sea Fisheries Enforcement Act (16 U.S.C. 1823 note), making two changes. First, section 302 would be broadened by inserting the words “and the Central Sea of Okhotsk” after “Central Bering Sea.” This amendment would ban U.S. fishing activities in the Central Sea of Okhotsk except when permitted by an international agreement to which the United States and Russia are both parties. Penalties and permit sanctions applicable under the Magnuson Act would apply to U.S. fishermen who violate the ban. Second, section 306 reorders the definitions and inserts a new definition for the term “Central Sea of Okhotsk.” These changes would extend the same protections to the Central Sea of Okhotsk as are provided presently to the Central Bering Sea under U.S. domestic law, thus furthering U.S.-Russian cooperation on international fishery management issues.

TITLE VI—DRIFTNET MORATORIUM

Section 601. Short title

This section states that title VI of S. 267, as reported, may be cited as the “High Seas Driftnet Fishing Moratorium Protection Act.”

Section 602. Findings

This section contains findings by Congress which state that Congress has enacted and the President has signed into law numerous Acts to control or prohibit large-scale driftnet fishing both within the jurisdiction of the United States and beyond the EEZ of any nation, and that the United States requested three resolutions and three decisions which were adopted by the U.N. General Assembly to establish and reaffirm a global moratorium on large-scale driftnet fishing on the high seas. The section specifically mentions Resolution 46/215 of the U.N. General Assembly, which calls on all nations, both individually and collectively, to prevent large scale driftnet fishing on the high seas.

Section 603. Prohibition

This section prohibits the United States from entering into any international agreement with respect to the conservation and management of living marine resources or the use of the high seas by fishing vessels that would prevent full implementation of the global moratorium on large-scale driftnet fishing on the high seas.

Section 604. Negotiations

This section requires the Secretary of State to seek to enhance the implementation and effectiveness of the moratorium on large-scale driftnet fishing on the high seas through appropriate international agreements and organizations.

Section 605. Certification

This section requires the Secretary of State to determine in writing prior to the signing or provisional application by the United States of any international agreement with respect to the conservation and management of living marine resources or the use of the high seas by fishing vessels that the prohibition contained in section 603 of the reported bill will not be violated if such agreement is signed or provisionally applied.

The Committee intends that agreements to which sections 603, 604 and 605 of the reported bill apply include the U.N. Convention on the Law of the Sea and any other agreement which has not been signed or provisionally applied by the United States at the time of enactment of this Act. For example, the Committee notes that the United States presently is engaged in negotiations under the U.N. Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks to establish a treaty or agreement relating to fishing for such stocks. This title of the reported bill would prohibit the United States from becoming a signatory of such treaty or agreement if the final text undermines the effectiveness of the global driftnet moratorium. To date, the Conference Chairman's draft text recognizes the validity of international agreements like the global driftnet moratorium. The Committee encourages U.S. negotiators to work to ensure that the final text also recognizes (and strengthens, if possible) the global driftnet moratorium.

Section 606. Enforcement

This section requires the President to utilize appropriate Federal assets to detect, monitor, and prevent violations of the moratorium on large-scale driftnet fishing on the high seas. A large number of fishing vessels continue to use driftnets longer than 2.5 kilometers in the Mediterranean Sea, and the Committee expects that appropriate Federal assets will be used there and elsewhere to assist in curbing such violations.

TITLE VII—GOVERNING INTERNATIONAL FISHERY AGREEMENT

This title provides Congressional approval of the GIFA between the United States and Republic of Estonia as contained in the message to Congress from the President of the United States, dated January 19, 1995.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

PUBLIC LAW 96-339

[SEC. 3. REPORTS REGARDING BLUEFIN TUNA.]**SEC. 3. RESEARCH ON ATLANTIC HIGHLY MIGRATORY SPECIES.**

(a) *BIENNIAL REPORT ON BLUEFIN TUNA.*—The Secretary of Commerce shall prepare, for each biennial period commencing with the period covering calendar years 1981 and 1982, and submit to the Congress a report setting forth, with respect to such biennial period—

(1) the level of taking of bluefin tuna by United States fishermen in the Convention areas as defined in Article I of the International Convention for the Conservation of Atlantic Tunas;

(2) the status of bluefin tuna stocks within such Convention area and the trends in their population level; and

(3) related information resulting from the implementation of the observer program under section 2 of this Act.

The report required under this section shall be submitted to the Congress within sixty days after the close of the biennial period covered by the report. [There are authorized to be appropriated such sums as may be necessary to carry out this section.]

(b) *HIGHLY MIGRATORY SPECIES RESEARCH AND MONITORING.*—

(1) *Within 6 months after the date of enactment of the Atlantic Tunas Convention Authorization Act of 1995, the Secretary of Commerce, in co-operation with the advisory committee established under section 4 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971b) and in consultation with the United States Commissioners on the International Commission for the Conservation of Atlantic Tunas (referred to elsewhere in this section as the "Commission") and the Secretary of State, shall develop and implement a comprehensive research and monitoring program to support the conservation and management of Atlantic bluefin tuna and other highly migratory species that shall—*

(A) *identify and define the range of stocks of highly migratory species in the Atlantic Ocean, including Atlantic bluefin tuna; and*

(B) *provide for appropriate participation by nations which are members of the Commission.*

(2) *The program shall provide for, but not be limited to—*

(A) *statistically designed cooperative tagging studies;*

(B) *genetic and biochemical stock analyses;*

(C) *population censuses carried out through aerial surveys of fishing grounds and known migration areas;*

(D) *adequate observer coverage and port sampling of commercial and recreational fishing activity;*

(E) *collection of comparable real-time data on commercial and recreational catches and landings through the use of permits, logbooks, landing reports for charter operations and fishing tournaments, and programs to provide reliable reporting of the catch by private anglers;*

(F) *studies of the life history parameters of Atlantic bluefin tuna and other highly migratory species;*

(G) integration of data from all sources and the preparation of data bases to support management decisions; and
 (H) other research as necessary.

(3) *In developing a program under this section, the Secretary shall provide for comparable monitoring of all United States fishermen to which the Atlantic Tunas Convention Act applies with respect to effort and species composition of catch and discards. The Secretary through the Secretary of State shall encourage other member nations to adopt a similar program.*

ATLANTIC TUNAS CONVENTION ACT OF 1975

ADVISORY COMMITTEE

(a) There is established an advisory committee which shall be composed of—

(1) not less than five nor more than twenty individuals appointed by the United States Commissioners who shall select such individuals from the various groups concerned with the fisheries covered by the Convention; and

(2) the chairmen (or their designees) of the New England, Mid-Atlantic, South Atlantic, Caribbean, and Gulf Fishery Management Councils established under section 302(a) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852(a)) [16 USCS § 1852(a)].

Each member of the advisory committee appointed under paragraph (1) shall serve for a term of two years and shall be eligible for reappointment. Members of the advisory committee may attend all public meetings of the Commission, Council, or any panel and any other meetings to which they are invited by the Commission, Council, or any Panel. The advisory committee shall be invited to attend all nonexecutive meetings of the United States Commissioners and at such meetings shall be given opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission. Members of the advisory committee shall receive no compensation for their services as such members. On approval by the United States Commissioners—

(A) if not more than three members of the advisory committee are designated by the committee to attend any meeting of the Commission, Council, or advisory committee, or of any Panel, each of such members shall be paid for his actual transportation expenses and per diem incident to his attendance; and

(B) in any case in which more than three members are designated by the advisory committee to attend any such meeting, each such member to whom subparagraph (A) does not apply may be paid for his actual transportation expenses and per diem incident to his attendance.

Each member of the advisory committee appointed under paragraph (1) shall serve for a term of two years and shall be eligible for reappointment. Members of the advisory committee may attend all public meetings of the Commission, Council, or any Panel and any other meetings to which they are invited by the Commission, Council, or any Panel. The advisory com-

mittee shall be invited to attend all nonexecutive meetings of the United States Commissioners and at such meetings shall be given opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission. Members of the advisory committee shall receive no compensation for their services as such members. The Secretary and the Secretary of State may pay the necessary travel expenses of members of the advisory committee in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.

(b)(1) A majority of the members of the advisory committee shall constitute a quorum, but one or more such members designated by the advisory committee may hold meetings to provide for public participation and to discuss measures relating to the United States implementation of Commission recommendations.

(2) The advisory committee shall elect a Chairman for a 2-year term from among its members.

(3) The advisory committee shall meet at appropriate times and places at least twice a year, at the call of the Chairman or upon the request of the majority of its voting members, the United States Commissioners, the Secretary, or the Secretary of State. Meetings of the advisory committee shall be open to the public, and prior notice of meetings shall be made public in a timely fashion.

(4)(A) The Secretary shall provide to the advisory committee in a timely manner such administrative and technical support services as are necessary for the effective functioning of the committee.

(B) The Secretary and the Secretary of State shall furnish the advisory committee with relevant information concerning fisheries and international fishery agreements.

(5) The advisory committee shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this Act, the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), and the Convention. The advisory committee shall publish and make available to the public a statement of its organization, practices, and procedures.

(6) The advisory committee shall, to the maximum extent practicable, consist of an equitable balance among the various groups concerned with the fisheries covered by the Convention and shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App. § 1 et seq.).

ADMINISTRATION

(a) The Secretary is authorized and directed to administer and enforce all of the provisions of the Convention, this Act, and regulations issued pursuant thereto, except to the extent otherwise provided for in this Act. In carrying out such functions the Secretary is authorized and directed to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this Act, and with the concurrence of the Secretary of State, he may cooperate with the duly authorized officials of the government of any party to the Convention. In addition, the Secretary may utilize, with the concurrence of the Secretary of the department in which the Coast Guard is operating insofar as such utiliza-

tion involves enforcement at sea, with or without reimbursement and by agreement with any other Federal department or agency, or with any agency of any State, the personnel, services, and facilities of that agency for enforcement purposes with respect to any vessel in the fisheries zone, or wherever found, with respect to any vessel documented under the laws of the United States, and any vessel numbered or otherwise licensed under the laws of any State. When so utilized, such personnel of the States of the United States are authorized to function as Federal law enforcement agents for these purposes, but they shall not be held and considered as employees of the United States for the purposes of any laws administered by the Civil Service Commission.

* * * * *

(c)(1) Upon favorable action by the Secretary of State under section 5(a) of this Act on any recommendation of the Commission made pursuant to article VIII of the Convention, the Secretary shall promulgate, pursuant to this subsection, such regulations as may be necessary and appropriate to carry out such recommendation.

* * * * *

(3) The regulations required to be promulgated under paragraph (1) of this subsection may—

- (A) select for regulation one or more of the species covered by the Convention;
- (B) divide the Convention waters into areas;
- (C) establish one or more open or closed seasons as to each such area;
- (D) limit the size of the fish and quantity of the catch which may be taken from each area within any season during which fishing is allowed;
- (E) limit or prohibit the incidental catch of a regulated species which may be retained, taken, possessed, or landed by vessels or persons fishing for other species of fish;
- (F) require records of operations to be kept by any master or other person in charge of any fishing vessel;
- (G) require such clearance certificates for vessels as may be necessary to carry out the purposes of the Convention and this Act;
- (H) require proof satisfactory to the Secretary that any fish subject to regulation pursuant to a recommendation of the Commission offered for entry into the United States has not been taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention which have been adopted as regulations pursuant to this section;
- (I) require any commercial or recreational fisherman to obtain a permit from the Secretary and report the quantity of the catch of a regulated species;
- (J) require that observers be carried aboard fishing vessels for the purpose of providing statistically reliable scientific data; and
- (K) impose such other requirements and provide for such other measures as the Secretary may determine necessary to

implement any recommendation of the Convention or to obtain scientific data necessary to accomplish the purpose of the Convention;

except that no regulation promulgated under this section may have the effect of increasing or decreasing any allocation or quota of fish or *fishery mortality level* to the United States agreed to pursuant to a recommendation of the Commission.

VIOLATIONS; FINES AND FORFEITURES; APPLICATION OF RELATED LAWS

SEC. 7. (a) It shall be unlawful—

(1) for any person in charge of a fishing vessel or any fishing vessel subject to the jurisdiction of the United States to engage in fishing in violation of any regulation adopted pursuant to section 6 of this Act; or

(2) for any person subject to the jurisdiction of the United States to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish which he knows, or should have known, were taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention and adopted as regulations pursuant to section 6 of this Act, without regard to the citizenship of the person or vessel which took the fish.

(b) It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this Act to be made, kept, or furnished by such master or person.

(c) It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to refuse to permit any person authorized to enforce the provisions of this Act and any regulations adopted pursuant thereto, to board such vessel and inspect its catch, equipment, books, documents, records, or other articles or question the persons onboard in accordance with the provisions of this Act, or the Convention, as the case may be, or to obstruct such officials in the execution of such duties.

(d) It shall be unlawful for any person to import, in violation of any regulation adopted pursuant to section 6 (c) or (d) of this Act, from any country, any fish in any form of those species subject to regulation pursuant to a recommendation of the Commission, or any fish in any form not under regulation but under investigation by the Commission, during the period such fish have been denied entry in accordance with the provisions of section 6 (c) or (d) of this Act. In the case of any fish as described in this subsection offered for entry in the United States, the Secretary shall require proof satisfactory to him that such fish is not ineligible for such entry under the terms of section 6 (c) or (d) of this Act.

[(e) (1) Any person who—

[(A) violates any provision of subsection (a) of this section shall be assessed a civil penalty of not more than \$25,000, and for any subsequent violation of such subsection (a) shall be assessed a civil penalty of not more than \$50,000;

[(B) violates any provision of subsection (b) or (c) of this section shall be assessed a civil penalty of not more than \$1,000, and for any subsequent violation of such subsection (b) or (c) shall be assessed a civil penalty of not more than \$5,000; or

[(C) violates any provision of subsection (d) of this section shall be assessed a civil penalty of not more than \$100,000.

[(2) The Secretary is responsible for the assessment of the civil penalties provided for in paragraph (1). The Secretary may remit or mitigate any civil penalty assessed by him under this subsection for good cause shown.

[(3) No penalty shall be assessed under this subsection unless the person accused of committing any violation is given notice and opportunity for a hearing with respect to such violation.

[(4) Upon any failure of any person to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action.]

(e) The civil penalty and permit sanctions of section 308 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1858) are hereby made applicable to violations of this section as if they were violations of section 307 of that Act.

* * * * *

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 10. There are authorized to be appropriated to carry out this Act, including use for payment of the United States share of the joint expenses of the Commission as provided in article X of the Convention, not more than \$2,000,000 for each of the fiscal years 1989, 1990, 1991, 1992, and 1993.]

AUTHORIZATION OF APPROPRIATIONS

SEC. 10. There are authorized to be appropriated to carry out this Act, including use for payment of the United States share of the joint expenses of the Commission as provided in article X of the Convention, the following sums:

(1) For fiscal year 1995, \$2,750,000, of which \$50,000 are authorized in the aggregate for the advisory committee established under section 4 and the species working groups established under section 4A, and \$1,500,000 are authorized for research activities under this Act.

(2) For fiscal year 1996, \$4,000,000, of which \$62,000 are authorized in the aggregate for such advisory committee and such working groups, and \$2,500,000 are authorized for such research activities.

(3) For fiscal year 1997, \$4,000,000 of which \$75,000 are authorized in the aggregate for such advisory committee and such working groups, and \$2,500,000 are authorized for such research activities.

(4) For fiscal year 1998, \$4,000,000 of which \$75,000 are authorized in the aggregate for such advisory committee and such

working groups, and \$2,500,000 are authorized for such research activities.

ANNUAL REPORT

Not later than April 1, 1996, and annually thereafter, the Secretary shall prepare and transmit to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report, that—

(1) details for the previous 10-year period the catches and exports to the United States of highly migratory species (including tunas, swordfish, marlin and sharks) from nations fishing on Atlantic stocks of such species that are subject to management by the Commission;

(2) identifies those fishing nations whose harvests are inconsistent with conservation and management recommendations of the Commission;

(3) describes reporting requirements established by the Secretary to ensure that imported fish products are in compliance with all international management measures, including minimum size requirements, established by the Commission and other international fishery organizations in which the United States is a party; and

(4) describes actions taken by the Secretary under section 12.

CERTIFICATION

(a) If the Secretary determines that vessels of any nation are harvesting fish which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the convention area in a manner or under circumstances which would tend to diminish the effectiveness of the conservation recommendations of the Commission, the Secretary shall certify such fact to the President.

(b) Such certification shall be deemed to be a certification for the purposes of section 8 of the Fishermen's Protective Act (22 U.S.C. 1978).

(c) Upon certification under subsection (a), the Secretary shall promulgate regulations under section 6(c)(4) with respect to a nation so certified.

* * * * *

FISHERMEN'S PROTECTIVE ACT OF 1967

SEC. 7. (c) The Secretary shall from time to time establish by regulation fees which shall be paid by the owners of vessels entering into agreements under this section. Such fees shall be adequate (1) to recover the costs of administering this section, and (2) to cover a reasonable portion of any payments made by the Secretary under this section. [The amount fixed by the Secretary shall be predicted upon at least 33⅓ per centum of the contribution by the Government.] All fees collected by the Secretary shall be credited to a separate account established in the Treasury of the United States which shall remain available without fiscal year limitation to carry out the provisions of this section. Those fees not currently needed

for payments under this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States and all revenues accruing from such deposits or investments shall be credited to such separate account. If a transfer of funds is made to the separate account under section 5(b)(2) [[22 USCS § 1975(b)(2)] with respect to an unpaid claim and such claim is later paid, the amount so paid shall be covered into the Treasury as miscellaneous receipts. All payments under this section shall be made first out of such fees so long as they are available, and thereafter out of funds which are hereby authorized to be appropriated to such account to carry out the provisions of this section.

* * * * *

(e) The provisions of this section shall be effective until [October 1, 1993;] *October 1, 2000* except that payments may be made under this section only to such extent and in such amounts as are provided in advance in appropriation Acts.

* * * * *

SEC. 11. (a) In any case on or after June 15, 1994, in which a vessel of the United States exercising its right of passage is charged a fee by the government of a foreign country to engage in transit passage between points in the United States (including a point in the exclusive economic zone or in an area over which jurisdiction is in dispute), and such fee is regarded by the United States as being inconsistent with international law, the Secretary of State shall reimburse the vessel owner for the amount of any such fee paid under protest.

(b) In seeking such reimbursement, the vessel owner shall provide, together with such other information as the Secretary of State may require—

- (1) a copy of the receipt for payment;*
- (2) an affidavit attesting that the owner or the owner's agent paid the fee under protest; and*
- (3) a copy of the vessel's certificate of documentation.*

(c) Requests for reimbursement shall be made to the Secretary of State within 120 days after the date of payment of the fee, or within 90 days after the date of enactment of this section, whichever is later.

(d) Such funds as may be necessary to meet the requirements of this section may be made available from the unobligated balances of previously appropriated funds remaining in the Fishermen's Guaranty Fund established under section 7 and the Fishermen's Protective Fund established under section 9. To the extent that requests for reimbursement under this section exceed such funds, there are authorized to be appropriated such sums as may be needed for reimbursements authorized under subsection (a).

(e) The Secretary of State shall take such action as the Secretary deems appropriate to make and collect claims against the foreign country imposing such fee for any amounts reimbursed under this section.

(f) For purposes of this section, the term "owner" includes any charterer of a vessel of the United States.

(g) This section shall remain in effect until October 1, 1996.

SEC. 12. (a) If the Secretary of State finds that the government of any nation imposes conditions on the operation or transit of United States fishing vessels which the United States regards as being inconsistent with international law or an international agreement, the Secretary of State shall certify that fact to the President.

(b) Upon receipt of a certification under subsection (a), the President shall direct the heads of Federal agencies to impose similar conditions on the operation or transit of fishing vessels registered under the laws of the nation which has imposed conditions on United States fishing vessels.

(c) For the purposes of this section, the term "fishing vessel" has the meaning given that term in section 2101(11a) of title 46, United States Code.

(d) It is the sense of the Congress that any action taken by any Federal agency under subsection (b) should be commensurate with any conditions certified by the Secretary of State under subsection (a).

NORTH PACIFIC ANADROMOUS STOCKS ACT OF 1992

SEC. 803. DEFINITIONS.

As used in this title, the term—

(1) "Anadromous stocks" means stocks of species listed in the Annex to the Convention that migrate into the Convention area.

(2) "Anadromous fish" means fish of the species listed in the Annex to the Convention that migrate into the Convention area.

(3) "Authorized officer" means a law enforcement official authorized to enforce this title under section 809(a).

(4) "Commission" means the North Pacific Anadromous Fish Commission provided for by article VIII of the Convention.

(5) "Convention" means the Convention for the Conservation of Anadromous Stocks of the North Pacific Ocean, signed in Moscow, February 11, 1992.

(6) "Convention area" means the waters of the North Pacific Ocean and its adjacent seas, north of 33 degrees North Latitude, beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

(7) "Directed fishing" means fishing targeted at a particular species or stock of fish.

(8) "Ecologically related species" means living marine species which are associated with anadromous stocks found in the Convention area, including, but not restricted to, both predators and prey of anadromous fish.

(9) "Enforcement officer" means a law enforcement official authorized by any Party to enforce this title.

(10) "Exclusive economic zone" means the zone established by Proclamation Numbered 5030, dated March 10, 1983. For purposes of applying this title, the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States.

(11) "Fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds.

(12) "Fishing" means—

(A) the catching, taking, or harvesting of fish, or any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(B) any operation at sea in preparation for or in direct support of any activity described in subparagraph (A).

(13) "Fishing vessel" means—

(A) any vessel engaged in catching fish within the Convention area or in processing or transporting fish loaded in the Convention area;

(B) any vessel outfitted to engage in any activity described in subparagraph (A);

[(C) any vessel described in subparagraph (A) or (B).]

(C) any vessel supporting a vessel described in subparagraph (A) or (B).

(14) "Incidental taking" means catching, taking, or harvesting a species or stock of fish while conducting directed fishing for another species or stock of fish.

(15) "Party" means Canada, Japan, the Russian Federation, the United States, and any other nation that may accede to the Convention.

(16) "Secretary" means the Secretary of State.

(17) "United States Section" means the United States Commissioners of the Commission.

* * * * *

CENTRAL BERING SEA FISHERIES ENFORCEMENT ACT OF 1992

SEC. 302. PROHIBITION APPLICABLE TO UNITED STATES VESSELS AND NATIONALS.

(a) PROHIBITION.—Vessels and nationals of the United States are prohibited from conducting fishing operations in the Central Bering Sea and the *Central Sea of Okhotsk*, except where such fishing operations are conducted in accordance with an international fishery agreement to which the United States and the Russian Federation are parties.

(b) CIVIL PENALTIES AND PERMIT SANCTIONS.—A violation of this section shall be subject to civil penalties and permit sanctions under section 308 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1858).

* * * * *

SEC. 306. DEFINITIONS.

In this title, the following definitions apply:

(1) CENTRAL BERING SEA.—The term "Central Bering Sea" means the central Bering Sea area which is more than two hundred nautical miles seaward of the baselines from which the breadth of the territorial seas of the United States and the Russian Federation are measured.

(2) CENTRAL SEA OF OKHOTSK.—The term "*Central Sea of Okhotsk*" means the *central Sea of Okhotsk* area which is more than two hundred nautical miles seaward of the baseline from which the breadth of the territorial sea of the Russian Federation is measured.

[(2)] (3) FISHING VESSEL.—The term “fishing vessel” means any vessel which is used for—

(A) catching, taking, or harvesting fish; or

(B) aiding or assisting one or more vessels at sea in the performance of fishing operations, including preparation, supply, storage, refrigeration, transportation, or processing.

[(3)] (4) OWNS OR CONTROLS.—When used in reference to a vessel or processing facility—

(A) the term “owns” means holding legal title to the vessel or processing facility; and

(B) the term “controls” includes an absolute right to direct the business of the person owning the vessel or processing facility, to limit the actions of or replace the chief executive officer (by whatever title), a majority of the board of directors, or any general partner (as applicable) of such person, to direct the transfer or operations of the vessel or processing facility, or otherwise to exercise authority over the business of such person, but the term does not include the right simply to participate in those activities of such person or the right to receive a financial return, such as interest or the equivalent of interest, on a loan or other financing obligation.

[(4)] (5) PERMITTED FISHING VESSEL.—The term “permitted fishing vessel” means any fishing vessel that is subject to a permit issued by the Secretary of Commerce under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

[(5)] (6) PERSON.—The term “person” means any individual (whether or not a citizen of the United States), any corporation, partnership, association, cooperative, or other entity (whether or not organized under the laws of any State), and any State, local, or foreign government, or any entity of such government or the Federal Government.

[(6)] (7) PROCESSING FACILITY.—The term “processing facility” means any fish processing establishment or fish processing vessel that receives unprocessed fish.

MARINE MAMMAL PROTECTION ACT AMENDMENTS OF 1994

SEC. 15. TRANSITION RULE; IMPLEMENTING REGULATIONS.

(a) TRANSITION RULE.—Section 114(a)(1) (16 U.S.C. 1383a(a)(1)) is amended by striking “ending [April 1, 1994,] *May 1, 1994*,” and inserting in lieu thereof “until superseded by regulations prescribed under section 118, or until September 1, 1995, whichever is earlier,”.

(b) IMPLEMENTING REGULATIONS.—Except as provided otherwise in this Act, or the amendments to the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) made by this Act, the Secretary of Commerce or the Secretary of the Interior, as appropriate, shall, after notice and opportunity for public comment, promulgate regu-

lations to implement this Act and the amendments made by this Act by January 1, 1995.

